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ELECTRIC TRANSMISSION & FERC ORDER 1000

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Background on Electric Transmission and Competition

Generally, the power grid consists of three components: generation, transmission, and distribution. Generation involves power plants that convert energy into electricity. Transmission involves transformers that "step-up" the electricity by increasing the voltage and high-voltage power lines along which the "stepped-up" electricity travels. Distribution involves transformers that "step-down" the electricity and low-voltage power lines that distribute the electricity to customers. In Michigan, the Public Service Commission regulates the generation and distribution components of the power grid by establishing the rates and conditions of service, among other things. The Federal Energy Regulatory Commission (FERC) regulates the power grid's transmission component throughout most of the United States, except for certain transmission systems that are not interconnected with the rest of the Country.

Since the 1990s, FERC has emphasized competition in electric transmission with a focus on open access to the transmission system. In 1996, FERC Order 888 required all public utilities that owned, operated, or controlled transmission facilities to have an open access, nondiscriminatory transmission tariff (the rate, terms, and conditions of transmission services), and allowed a utility with transmission facilities to recuperate legitimate and FERC-verified costs from other utilities or electric generators using that utility's transmission facilities.

Subsequent orders expanded FERC's efforts to encourage competition. For example, FERC Order 2000 encouraged utilities with transmission facilities to join regional transmission organizations (RTOs) after it determined that the common vertical integration of electric utilities deterred competition in electric transmission. The Commission specified that, among other characteristics, RTOs must be independent, meaning that they operate the transmission system independently of, and foster competition among, utilities and other participants in the electric market. Many utilities voluntarily joined RTOs or sold their transmission assets to independent transmission companies.

Following FERC's recommendation, the Michigan Legislature enacted Public Act 141 of 2000, which required investor-owned electric utilities in the State to join a FERC-approved multistate regional transmission system organization or other FERC-approved multistate independent transmission organization or to divest their interests in their transmission facilities to an independent transmission owner. Some Michigan utilities with transmission facilities divested, some in the Upper Peninsula joined the American Transmission Company, but most utilities with transmission facilities in the State joined the Midcontinent Independent System Operator (MISO).

MISO & FERC Order 1000

Among other responsibilities, MISO operates and plans most of the electric transmission system across 15 states, including Michigan, and the Canadian province of Manitoba. Using the MISO Transmission Expansion Plan (MTEP), an 18-month overlapping planning cycle, MISO identifies current and future power grid needs within its footprint and then evaluates and accepts proposals to meet those needs from members of MISO. The Federal Energy Regulatory Commission regulates certain projects that MISO approves through the planning process.

In 2011, FERC issued Order 1000 with the intention of increasing competition in the transmission planning process. Among other things, Order 1000 required transmission providers to remove from

FERC-approved tariffs and agreements a Federal right of first refusal (ROFR) for a transmission facility selected in a regional transmission plan for purposes of cost allocation. (Generally, a ROFR is the right of an incumbent utility to construct and own any new project or facility of a project that is located within its service territory.) Order 1000 also specified that it did not override any state's policy concerning a ROFR. Since it took effect, six states in MISO's footprint have established a ROFR for incumbent utilities.

In compliance with Order 1000, MISO updated its tariffs and implemented a competitive developer selection process for certain projects whose costs can be shared across broader regions of MISO's footprint. As determined by MISO, projects classified as multi-value projects and market efficiency projects are eligible for the competitive developer selection process. Multi-value projects are regional transmission projects that meet certain reliability and economic value goals in a region as determined by MISO. Market efficiency projects are regional transmission projects that reduce market congestion. Multi-value and market efficiency projects can include one or more facilities, such as a segment of high-voltage power lines or a transformer, which are upgraded or constructed according to MISO's FERC-approved planning process: 1) upgrades to facilities that an incumbent utility already has constructed are completed by that incumbent utility; 2) if a state has enacted a ROFR, the incumbent utility constructs the new facilities in that state; and 3) any new facility that does not meet either of those circumstances is eligible for the competitive developer selection process. Before Order 1000, MISO could have awarded new facilities now eligible for the competitive developer selection process to an incumbent utility with a Federal ROFR.

Order 1000 and a Proposed State ROFR

Since the competitive developer selection process began in the 2015 MTEP cycle, MISO has approved thousands of projects. Three of these projects were eligible for the competitive developer selection process and none of these eligible projects have been in Michigan. The relatively few projects that have been eligible for the competitive developer selection process and completed has led to a broader discussion on the efficacy of Order 1000's Federal ROFR prohibition.

Some consider the Order's intentions to spur development of regional transmission by breaking down perceived barriers to that development as valuable. They contend that competition created by the prohibition on a Federal ROFR and introduction of MISO's competitive developer selection process for new facilities in certain transmission projects leads to lower costs for customers in MISO's footprint. They suggest that the Federal ROFR was anti-competitive and that when the Federal ROFR was allowed incumbent utilities had no incentive to provide cost savings or protections for cost overruns so long as the incumbent utility could justify those costs to FERC. Proponents also suggest that the prohibition of a Federal ROFR increased transparency in the planning process.

Critics of Order 1000's prohibition of a Federal ROFR consider the time and cost created by the competitive developer selection process as inefficient. According to MISO, the competitive process can add between 300 and 400 days to the planning of a project as MISO requests and evaluates proposals submitted by incumbent and nonincumbent transmission developers for new facilities. In addition, opponents suggest that RTOs do not want to undergo the competitive developer selection process because of the time and cost it takes, citing the relatively few projects that MISO has undertaken since 2015 for the competitive process as evidence of this unwillingness. Finally, opponents also suggest that the competitive process has disincentivized collaboration among transmission providers as these providers produce proposals for projects in a competitive, less transparent manner.

As mentioned, six states in the MISO footprint have enacted a ROFR for incumbent utilities. This establishes the right of an incumbent utility to construct a new facility in that state when MISO approves a project that qualifies for the competitive developer selection process. In Michigan, Senate Bill 103 from the 2021-22 legislative session would enact a State ROFR. The background and arguments described above provide an overview of ROFRs in the current electric transmission market and some potential implications for states considering the establishment of a ROFR.